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**as Contractor.**—If the company's liability was that of a contractor, it would continue until the acceptance of the work.

[Ed. Note.—For other cases, see Gas, Cent. Dig. § 12; Dec. Dig. § 14½.\* 6 Va.-W. Va. Enc. Dig. 707.]

**3. Gas (§ 14½\*)—Liability of Company—Repair Work—Proximate Cause.**—The lapse of 30 days between the time the covering over an opening in a vestibule excavated to repair gas pipes was put in place and the injury to one lawfully using the vestibule does not, in the absence of some intervening cause, prevent the negligent construction of the cover from being the proximate cause of the injury.

[Ed. Note.—For other cases, see Gas, Cent. Dig. § 21; Dec. Dig. § 14½.\* 6 Va.-W. Va. Enc. Dig. 707.]

**4. Gas (§ 14½\*)—Liability of Company—Repair Work—Liability of Others.**—The fact that the landlord of an apartment house may be liable to his tenant for permitting an unsafe cover over an opening dug by a gas company to repair its pipes to remain in that condition for 30 days does not affect the liability of the gas company for its negligence in leaving the premises in that condition.

[Ed. Note.—For other cases, see Gas, Cent. Dig. § 12; Dec. Dig. § 14½.\* 6 Va.-W. Va. Enc. Dig. 707.]

Error to Law and Chancery Court of City of Norfolk.

Action by Margaret Lawrence against the City Gas Company of Norfolk. Judgment for the plaintiff, and defendant brings error. Affirmed.

*W. H. Taylor*, of Norfolk, and *H. W. Anderson* and *A. D. Christian*, both of Richmond, for plaintiff in error.

*Geo. C. Cabell*, of New York City, and *Jeffries & Jeffries*, of Norfolk, for defendant in error.

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#### CONAWAY v. COMMONWEALTH.

March 16, 1916.

[88 S. E. 75.]

**1. Criminal Law (§ 1092 (8)\*)—Exceptions—Statute.**—In a homicide case, where the trial judge refused to sign the defendant's exceptions presented within 30 days from the end of the term, as required by Code 1904, § 3385, until the attorneys for the commonwealth should be present, and immediately after he became ill, and later died, and the exceptions were finally signed by his successor, they were valid and a part of the record as if signed within 30 days, since the accused had done everything necessary under section 3385 when she tendered

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

to the trial judge the bill of exceptions, which fairly stated the truth of the case, within 30 days from the end of the term.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 2855, 2856, 2861; Dec. Dig. § 1092 (8).\* 5 Va.-W. Va. Enc. Dig. 391.]

**2. Criminal Law (§ 1092 (13\*))—Exceptions—Statute.**—In a homicide case, the fact that a bill of exceptions was signed by a succeeding judge after the death of the trial judge did not affect their validity, as the succeeding judge was clothed with every function of the trial judge, and competent to pass upon every case remaining on the docket.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 2836, 2842, 2845; Dec. Dig. § 1092 (13).\* 5 Va.-W. Va. Enc. Dig. 392.]

**3. Criminal Law (§ 1092 (10\*))—Exceptions—Signing—Mandamus.**—Under Code 1904, § 3385, providing that bills of exceptions which fairly state the truth of the case shall be signed by the trial judge if presented within 30 days from the end of the term, where a judge refused to sign a bill of exceptions, a writ of mandamus would lie, either before or after the expiration of the 30 days, to require his signature.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 2843, 2844; Dec. Dig. § 1092 (10).\* 5 Va.-W. Va. Enc. Dig. 392.]

**4. Criminal Law (§ 1207\*)—Punishment—Statute.**—The accused was indicted for the murder of her husband. At the date of the crime Code 1904, § 3663, read, "Murder of the first degree shall be punished with death." By an amendment which became law before the date of the trial, section 3663 was made to read, "Murder of the first degree shall be punished with death or in the discretion of the jury by confinement in the penitentiary for life." Code 1904, § 6, provides that no new law shall be construed to repeal a former law as to any offense committed against the former law, and that, if a punishment be mitigated by a new law, such punishment may at the consent of the party affected be applied to any judgment pronounced after the new law takes effect. At the trial of the accused the jury were instructed under the amended section, to which she objected, claiming the right under section 6, above stated, to elect whether she should be sentenced under the original or the amended act. Held, that the privilege of choosing between the original act and the amendment belonged to the accused and not to the commonwealth, and that the amended section 3663 and section 6, of the Code, must be read together, and when so read will be substantially as follows: "Murder of the first degree shall be punished with death or in the discretion of the jury by confinement in the penitentiary for life, but the mitigated punishment provided by this act shall not, without the consent of the party affected, be applied to any judgment pronounced after

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this new law takes effect for an offense committed before it takes effect."

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 3278; Dec. Dig. § 1207.\* 12 Va.-W. Va. Enc. Dig. 143.]

Error to Circuit Court, Lancaster County.

Mrs. William Conaway was convicted of murder, and brings error. Reversed and remanded.

*R. O. Norris, Jr.*, of Lively, and *T. J. Downing*, of Lancaster, for plaintiff in error.

*John G. Pollard, Atty. Gen.*, for the Commonwealth.

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KANTER *v.* M. HOFHEIMER & CO., Inc.

March 16, 1916.

[88 S. E. 60.]

**1. Frauds, Statute of (§ 23 (3)\*)—Promise to Pay the Debt of Another.**—Where defendant himself purchased goods, plaintiff refusing to sell to a corporation of which defendant was the principal stockholder, defendant's promise to pay for the goods, though he delivered them to the corporation, is not within the statute of frauds.

[Ed. Note.—For other cases, see Frauds, Statute of, Cent. Dig. §§ 18, 19; Dec. Dig. § 23 (3).\* 6 Va.-W. Va. Enc. Dig. 518.]

**2. Appeal and Error (§ 1002\*)—Review—Verdict.**—A verdict of the jury on conflicting evidence, being supported by evidence, is conclusive on appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3935-3937; Dec. Dig. § 1002.\* 1 Va.-W. Va. Enc. Dig. 620.]

Error to Hustings Court of Portsmouth.

Action by M. Hofheimer & Co., Incorporated, against Israel Kanter. There was judgment for plaintiff, and defendant brings error. Affirmed.

*R. R. Hicks*, of Norfolk, for plaintiff in error.

*S. M. Brandt*, of Norfolk, for defendant in error.

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CARLTON *et al.* *v.* BOUDAR.

March 16, 1916.

[88 S. E. 174.]

**1. Parties (§ 75 (7)\*)—Misjoinder—Method of Raising Question.**—Under Code 1904, § 3258a, misjoinder of parties cannot be taken ad-

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